United States Service Industries, Inc. *and* Clemencia Pacheco. Case 5–CA–22988

June 13, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

On September 2, 1993, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

The judge found that the Respondent violated Section 8(a)(1) of the Act by discharging employee Clemencia Pacheco because she concertedly complained about wages, hours, and working conditions, or was active in soliciting other employees to concertedly complain about such matters. In excepting to the judge's decision, the Respondent contends that Pacheco did not engage in concerted activity because she did not speak to other employees about working conditions and only complained to management on behalf of herself. For the reasons set forth below, we find it unnecessary to decide whether Pacheco in fact engaged in concerted activities because the credited testimony clearly shows that the Respondent discharged her in the belief that she had acted with other employees concerning working conditions. The facts, summarized below, are more fully set forth in the judge's decision.

The Respondent provides cleaning services to approximately 150 buildings in Washington, D.C., including an office building at 1000 Connecticut Avenue where Pacheco had been employed for 11 years. The employees worked a 20-hour week, from 6 p.m. to 10 p.m., Monday through Friday.

Pacheco was assigned to the 11th floor of the Connecticut Avenue facility where Attorney John Mannix leased an office. Mannix became acquainted with Pacheco and permitted her to use his office phone to call her family in Ecuador. Pacheco made approximately three calls a month to Ecuador for which she promptly paid Mannix. In addition, Pacheco testified that she regularly takes breaks at 9:10 p.m. to call her son for a ride home.

Prior to an inspection in July 1992, the Respondent assigned bathroom duties to floor employees who had not previously been responsible for such duties. Following a successful inspection, the Respondent called a meeting of employees to announce the results. At this meeting, the employees suggested that as a reward for the satisfactory inspection they should get a day off or a meal. Supervisor Marvin Andrade considered the employees' suggestion and agreed to provide a meal the following week. Pacheco then went to the front of the assembled employees and said, ''I speak for myself. I don't want to do the bathrooms.'' Despite this complaint to Andrade, Pacheco and the other employees continued to clean the bathrooms.

On July 28, while on her break at 9:10 p.m., Pacheco used Mannix's phone to call her daughter. Operations Manager Raul Arroyo walked in and became angry that Pacheco was on the phone and fired her. Upon learning of this incident, Mannix called Respondent's vice president, Richard Gallaher, and explained that Pacheco had his permission to use the phone, that she was honest and punctual in paying the bills, and that he did not see any reason to terminate her. Gallaher answered, ''That was just the tip of the iceberg.'' When Mannix asked what he meant, Gallaher explained: ''Well, she's been stirring up the other workers and we can't tolerate that.''

Mannix credibly testified that he overheard Pacheco on ''four or five occasions'' prior to her discharge, complaining to her supervisor, in the presence of other employees, that she had to work more hours for the same money, and do work on other floors.

In *Monarch Water Systems*, 271 NLRB 558 (1984), the Board found that an employee was discharged because the company president believed that the employee participated with a former employee in instigating a Department of Labor compliance investigation. In these circumstances, the Board concluded that the discharge violated Section 8(a)(1) of the Act regardless of whether the two employees had, in fact, acted in concert in instigating the compliance investigation. It was sufficient that the company discharged an employee in the belief that he engaged in concerted activity for the purpose of mutual aid or protection. The Board stated:

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

> [A]ctions taken by an employer against an employee based on the employer's belief the employee engaged in or intended to engage in protected concerted activity are unlawful even though the employee did not in fact engage in or intend to engage in such activity. [Id. at fn. 3. Citations omitted.]

Accord: *Holyoke Visiting Nurses Assn*., 310 NLRB 684, 687–688 (1993), enfd. 11 F.3d 302 (1st Cir. 1993) (violation of Sec. 8(a)(1) and (3) to take action against employee because of employer's ''conclusion'' that she had supported a union protest).

Applying this principle here in the context of a *Wright Line*[2] analysis, we find that the General Counsel made a showing sufficient to support the inference that the Respondent's belief that Pacheco engaged in protected concerted activity was a motivating factor in the Respondent's decision to discharge her. Thus, the credited testimony of Attorney Mannix shows that Pacheco repeatedly complained to her supervisor in the presence of other employees about hours and work assignments, and that the Respondent's vice president admitted that he could not ''tolerate'' Pacheco's ''stirring up the other workers.'' Contrary to the Respondent's contention in its brief, we are not persuaded that the judge's crediting of Mannix's testimony is incorrect. See *Conair Corp. v. NLRB*, 721 F.2d 1355, 1367–1368 (D.C. Cir. 1983) (judge's credibility appraisals upheld where neither ''hopelessly incredible'' nor ''self-contradictory''); footnote 1, supra.

We further find, for the reasons set forth by the judge, that the Respondent has not met its burden under *Wright Line* of demonstrating that it would have discharged Pacheco even in the absence of its belief that she engaged in protected concerted activity. Thus, the judge found that the Respondent's explanation for the discharge was not credible and was not supported by the record. Accordingly, we conclude that the Respondent violated Section 8(a)(1) of the Act by discharging Pacheco.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United States Service Industries, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[2] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

Angela F. Anderson, Esq., for the General Counsel.
Joel I. Keiler, Esq., of Reston, Virginia, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. This case was heard at Washington, D.C., on April 20 and 21 and June 22, 1993. The charge was filed on September 15, 1992, by Clemencia Pacheco, an individual.[1] The complaint, which issued on November 5 and was amended on November 20, alleges that United States Service Industries, Inc. (Company or Respondent) violated Section 8(a)(1) of the National Labor Relations Act. The gravamen of the complaint is that the Company allegedly discharged employee Pacheco because it believed she had concertedly complained to the Company regarding the wages, hours and working conditions of the Company's employees or was active in getting other employees to concertedly complain about such matters. The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. Only the Company filed a brief.

On the entire record in this case[2] and from my observation of the demeanor of the witnesses, and having considered the arguments of the parties, I make the following

FINDINGS OF FACT

I. BUSINESS OF THE COMPANY

The Company, a Delaware corporation with an office and place of business in Washington, D.C., is engaged in the business of providing full-service janitorial services to offices and buildings in Washington, D.C. and adjacent areas in Virginia.

In the operation of its business, the Company annually derives gross revenues in excess of $1 million and annually receives goods and supplies valued in excess of $50,000 directly from points outside of the District of Columbia. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

This case presents a seemingly paradoxical problem of credibility. The Company's best witness was the alleged discriminatee. The alleged discriminatee's best witness was a management attorney.

The Company, with some 2000 employees, provides cleaning service for approximately 150 buildings, including since 1988, the office building at 1000 Connecticut Avenue in Washington, D.C. Company Vice President of Operations Richard Gallaher has overall charge of most of the Company's operations, including 1000 Connecticut Avenue. Operations Manager Raul Arroyo reports to Gallaher. In July

[1] All dates herein are for 1992 unless otherwise indicated.

[2] A small portion of the record, consisting of preliminary testimony by General Counsel witness John W. Mannix, is missing and unavailable, for reasons given by the reporting service in its letter of June 30, 1993. There is no dispute as to the content of the missing testimony. The General Counsel's letter of July 13, 1993, is received as a motion to correct transcript, and the transcript is corrected accordingly. The transcript is also corrected in the other respects.

1992 he was responsible for 10 buildings, including 1000 Connecticut Avenue. During the summer of 1992 Marvin Andrade was company supervisor at 1000 Connecticut Avenue. However at the time of Pacheco's discharge he was on vacation, and Arroyo acted as supervisor in his place. Although witnesses referred to one Jose Romaro as an assistant supervisor, Romaro was a rank-and-file employee, who assisted Andrade, but did not himself perform any supervisory functions. The Company had no office of its own at 1000 Connecticut Avenue. In the summer of 1992 the Company had 17 employees assigned to 1000 Connecticut Avenue. They normally worked a 20-hour week: from 6 p.m. to 10 p.m., Monday through Friday. The employees are not represented by any labor organization.

Clemencia Pacheco, a middle-aged woman, came to the United States from Ecuador in 1963. She testified that she lives with her husband and children. Pacheco began working at 1000 Connecticut Avenue in 1981, and worked successfully for two cleaning service firms before the Company took over the operation. Pacheco was always assigned to the 11th floor, whose occupants included Attorney John W. Mannix. Attorney Mannix was pleased with Pacheco's work, and eventually got to know her. Mannix gave her permission to use his office phone to call her family in Ecuador. Mannix testified that she made an average of three such calls per month and promptly reimbursed Mannix for the charges. Although company supervisors sometimes used telephones in the building, the evidence fails to indicate that any rank-and-file employees other than Pacheco did so.

Three times each year the building management, by its property manager, conducted an inspection of the premises in order to evaluate the quality of the cleaning service. The inspection was critical to the Company, as an unsatisfactory evaluation could result in loss of its contract. An inspection was scheduled to take place in July. On July 15 Andrade assembled the employees, preliminary to the inspection. Prior to that time, the Company assigned one employee to each floor, with additional employees assigned to specific tasks throughout the building, including cleaning restrooms. The floor employees, including Pacheco, were not responsible for cleaning restrooms. However shortly after the July 15 meeting, Andrade reassigned that work, directing the floor employees to clean the restrooms on their respective floors. The inspection proved satisfactory, and following the inspection, Andrade assembled the employees and complimented them on their work.

Pacheco testified in sum as follows: One Maria, who preceded Arroyo as operations manager, was present with Supervisor Andrade at the July 15 meeting. Prior to the meeting, that same day, ''we had spoken with Maria'' and ''we were requesting that we didn't have soap, rags and brooms.'' At the meeting Andrade simply said: ''Please help, help, I want to pass the inspection.'' At the meeting following the inspection, the employees agreed that as a reward, they should get either a day off or a meal. Andrade said he preferred to give them the meal, and would do so the following week. Pacheco spoke up, saying: ''I speak for myself. I dont want to do the bathrooms.'' Andrade said that ''if all the women would have brought it up, they would have brought another person or given us another person.'' Pacheco continued to clean the bathrooms. Prior to her discharge she had no complaints about her work. She did not know the names of the other employees, who came and went, and had no contact with them except to say ''Hi.'' She did not speak to anyone except Andrade about working conditions, and he complained to her. She complained for herself when she needed cleaning supplies.

Pacheco further testified in sum as follows: Although she officially worked a 20-hour week, she sometimes worked longer, sometimes starting before 6 p.m. or continuing after 10 p.m. On July 28, at 9:10 p.m. she took her break. She was using Mannix's phone, making a local call to her son, when Operations Manager Arroyo walked in. He was angry. Pacheco asked him to sit down, and asked if he wanted a cup of coffee. Arroyo told Pacheco she was fired. Arroyo left, and Pacheco continued to work until 10:10 p.m. (In her investigatory affidavit she said she worked until 10 p.m.) The next day she told Mannix what happened. He proceeded to make a telephone call. Pacheco then went to see Arroyo, who told her: ''Go and talk to your people who back you up if you want to talk to them, because you are fired.'' Pacheco continued to work that day, but the next day she left when Arroyo gave Pacheco her paycheck and again told her she was fired. Supervisor Andrade knew that she used Mannix's phone. On June 16 she was using the phone, when Andrade said he had to make a call. Pacheco said he could use another phone, and he did so.

John W. Mannix (now deceased) was an attorney engaged in private practice. He handled contract claims and represented management in labor relations matters.[3] Mannix testified in sum as follows: Pacheco did an excellent job and had a good reputation. In July, Pacheco told Mannix that she was fired for using Mannix's phone, although she had his permission. She asked Mannix to speak to the Company. Mannix then received a call from the property manager, who asked if Pacheco had permission to use his phone. He said: ''Yes, absolutely.'' Mannix then called Vice President Gallaher. Mannix explained that Pacheco had permission to use the phone, was honest and punctual in paying the bills, and he saw no reason to terminate her. Gallaher answered, ''That was just the tip of the iceberg.'' Mannix asked what he meant. Gallaher explained: ''Well, she's been stirring up the other workers and we can't tolerate that.'' Gallaher said he would discuss the situation with the supervisor, and Pacheco should wait. But the next day Pacheco said she was fired. Mannix, who understands Spanish, overheard Pacheco on four or five occasions prior to her discharge, complaining to her supervisor, in the presence of other employees, that she had to work more hours for the same money, and do work on other floors.

Vice President Gallaher testified as the first and last witness in this proceeding, first as an adverse witness for General Counsel, and last as the Company's only witness. As a General Counsel witness, Gallaher testified in sum as follows: In the summer of 1992 he received a call from a tenant who wanted to know why Pacheco was discharged. Gallaher answered that he knew nothing about it but would look into it. The next day he told the tenant they were still looking

[3] The Company (Br. 4) indicates some skepticism concerning Mannix's assertion in this regard. I take administrative notice of *Corson & Gruman Co.*, 278 NLRB 329 (1986), enfd. 124 LRRM 2560 (4th Cir. 1987), in which Mannix represented the respondent employer.

into it. Gallaher avoided giving a specific answer because he felt it was none of the tenant's business. The Company may not have even made a decision at that time.

However, as a company witness, having heard Mannix's testimony, Gallaher equivocated. Gallaher testified in sum as follows: He did not recall what was said in his conversation with Mannix, except that Mannix questioned why Pacheco was being terminated. He did not think he said that use of the telephone was merely the tip of the iceberg, or that Pacheco was stirring up the employees and they were not going to put up with that. It was Gallaher's standard practice to avoid discussing such issues, because ''it's none of the tenant's business how we manage our employees.'' Gallaher never told tenants that employees were not allowed to use their telephones.

The Company stipulated that it did not distribute any personnel policies to its employees concerning use of the telephone or use of work or company time. However Gallaher testified that employees are not permitted to take any breaks during their 4-hour workday, including use of the telephone. Gallaher did not testify concerning the reason for Pacheco's discharge.

Operations Manager Arroyo, who was called as a General Counsel adverse witness, testified in sum as follows: About July 29 he fired Pacheco when he found her using a tenant's telephone. At the time Arroyo was doing a walk-through inspection. Pacheco asked him to sit down. She said she was talking to her daughter, who was sick. Arroyo said she was not supposed to be using a telephone. Pacheco responded that she had permission, and ''You can't do anything about it because I'm living with the owner of the building.'' Arroyo checked with Assistant Supervisor Romaro, who said this kind of conduct happened many times before, and that other managers went through the same problem with Pacheco. The next time Arroyo spoke to Pacheco, at the end of her shift, he told her she was fired because she used the telephone on company time. Pacheco replied that she had permission and she would ''fight it.'' Arroyo insisted that she broke a company rule. The next day Arroyo told Gallaher they would probably have a suit, because Pacheco said she was living with the owner. Arroyo understood that the ''owner'' was in fact a tenant on the 11th floor. Arroyo never instructed any supervisor at 1000 Connecticut Avenue to discipline or warn employees regarding using the telephone.

Supervisor Andrade, also called as a General Counsel adverse witness, testified in sum as follows: Prior to Pacheco's discharge, he saw Pacheco on about four occasions using the telephone. She told him that she had permission from the tenant. After he returned from his vacation, Arroyo told him that Pacheco was discharged because Arroyo found her using the telephone. Pacheco did not say anything at the meeting following the inspection. She told Andrade privately that she would not do the restrooms because it was too much work. However she did clean the restrooms.

I credit the testimony of Attorney Mannix, who impressed me as a credible witness. As indicated, Gallaher was equivocal and contradictory in his testimony concerning his explanation to Mannix. I find that Gallaher's admission to Mannix reflected the real reason for Pacheco's discharge, that Pacheco did, in the presence of other employees, complain to their supervisors concerning assignment of additional work requiring additional worktime for the same pay, and that Gallaher directed or approved her discharge for this reason. Consequently, I also credit Pacheco's testimony concerning the meeting following the inspection. I do not credit Gallaher's assertion that employees were not permitted to take any break, either to use the telephone or for any other reason. Neither Arroyo nor Andrade testified as to any such rule. As indicated, Andrade testified that on some four occasions he saw Pacheco using the telephone. However, he took no action after Pacheco told him that she had permission from the tenant. If company policy prohibited employees from taking any break from work, then Andrade probably would have disciplined or warned Pacheco, or if in doubt, checked with Arroyo. However, Andrade did not do so. I find that Andrade's course of action reflected actual company practice, and that employees were permitted to take a break, subject to the restriction that they could not use tenant telephones without permission. I also find significant the facts that Pacheco had worked at 1000 Connecticut Avenue for some 11 years, that her work was regarded as more than satisfactory, and that she had never been warned or disciplined concerning her work or work habits.

The Company's action was unlawful, whether measured by the standards of *Meyers Industries*, 268 NLRB 493 (1984) (*Meyers I*),[4] or *Alleluia Cushion*, 221 NLRB 999 (1975). In *Meyers I*, the Board cited with approval an earlier Board decision (*Root-Carlin, Inc.*), holding that: ''Manifestly, the guarantees of Section 7 of the Act extend to concerted activity which *in its inception involves only a speaker and a listener,* for such activity is an indispensable preliminary step to employee self-organization.'' *Meyers I*, supra at 494 (emphasis added in *Meyers*). Where, as here, an employee, in the presence of other employees, complains to management concerning wages, hours, or other terms and conditions of employment, such complaints constitute protected concerted activity, even though the employee purports to speak on behalf of himself or herself. *Gold Coast Restaurant v. NLRB*, 143 LRRM 2505, 2509 (D.C. Cir. 1993); see also *NLRB v. Sencore, Inc.*, 558 F.2d 433 (8th Cir. 1977); *Jeannette Corp.*, 217 NLRB 653, 657 (1975), enfd. 532 F.2d 916 (3d Cir. 1976). Indeed, Pacheco's testimony indicates that preliminary to the meeting following the inspection, the employees were already engaged in group action, in that they agreed that they wanted some reward for their performance.

For the foregoing reasons, I find that the Company violated Section 8(a)(1) by discharging Pacheco because she engaged in protected concerted activity. On the basis of the evidence concerning Pacheco's protected concerted activity, Gallaher's admission to Mannix, and the pretextural reason advanced by the Company for Pacheco's termination, the General Counsel presented a prima facie case that the Company terminated Pacheco because of her protected concerted activity. As the Company's explanation for the discharge was not credible, it follows that the Company failed to meet its burden of establishing that it would have terminated Pacheco in the absence of her protected concerted activity.

[4] Remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), on remand 281 NLRB 882 (1986) (*Meyers II*), affd. 835 F.2d 1481 (D.C. Cir. 1987).

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discharging Clemencia Pacheco, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has violated Section 8(a)(1) of the Act, I shall recommend that it be required to cease and desist therefrom and from like or related conduct, and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Company discriminatorily terminated Clemencia Pacheco, it will be recommended that the Company be ordered to offer her immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings and benefits that she may have suffered from the time of her discharge to the date of the Company's offer of reinstatement. I shall further recommend that the Company be ordered to remove from its records any reference to her unlawful termination, to give her written notice of such expunction, and to inform her that its unlawful conduct will not be used as a basis for further personnel actions against her. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[5] It will also be recommended that the Company be required to preserve and make available to the Board, or its agents, on request, payroll and other records to facilitate the computation of backpay and reimbursement due.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, United States Service Industries, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating or otherwise discriminating against employees because they discuss their wages, hours, or other terms and conditions of employment with their fellow employees or management, or otherwise engage in protected concerted activities for mutual aid and protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Clemencia Pacheco immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for losses she suffered by reason of the discrimination against her as set forth in the remedy section.

(b) Remove from its files any reference to the termination of Clemencia Pacheco and notify her in writing that this has been done and that evidence of her unlawful termination will not be used as a basis for future personnel actions against her.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(d) Post at its Washington, D.C. facilities, copies of the attached notice marked ''Appendix.''[7] Copies of said notice on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] Under *New Horizons*, interest on and after January 1, 1987, is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT terminate or otherwise discriminate against employees because they discuss their wages, hours, or other terms and conditions of employment with fellow employees or management, or otherwise engage in protected concerted activities for mutual aid and protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to engage in union or concerted activities, or to refrain therefrom.

WE WILL offer Clemencia Pacheco immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to

her seniority or other rights and privileges previously enjoyed, and make her whole for losses she suffered by reason of the discrimination against her.

WE WILL remove from our files any reference to the termination of Clemencia Pacheco and notify her in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel actions against her.

UNITED STATES SERVICE INDUSTRIES, INC.